

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,  
Plaintiff,

v.

CIVIL ACTION NO. 3:17-01362

AMERISOURCEBERGEN  
DRUG CORPORATION, et al.,  
Defendants.

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CABELL COUNTY COMMISSION,  
Plaintiff,

v.

CIVIL ACTION NO. 3:17-01665

AMERISOURCEBERGEN  
DRUG CORPORATION, et al.,  
Defendants.

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**AMERISOURCEBERGEN DRUG CORPORATION’S  
MOTION FOR SUMMARY JUDGMENT BASED ON *RES JUDICATA***

Defendant AmerisourceBergen Drug Corporation (“ABDC”), pursuant to Rule 56 of the Federal Rules of Civil Procedure, hereby moves for summary judgment in its favor.

1. In this Motion, ABDC argues that Plaintiffs’ claims assert near identical causes of action that are wholly derivative of those brought by the State of West Virginia in Civil Action No. 12-C-141 in the Circuit Court of Boone County, West Virginia.

2. The State’s claims were brought in its *parens patriae* capacity on behalf of the citizens of West Virginia. The State settled its claims with ABDC through a Settlement Agreement

and Release, which agreed to release all claims that it “has asserted or could have asserted on its own behalf or in its *parens patriae* capacity.”

3. The doctrine of *res judicata* precludes litigation of the same or similar claims by a party in privity where there has been a final adjudication on the merits of the prior claims.

4. Plaintiffs’ claims are virtually identical to those brought by the State, seeking abatement of the same public nuisance.

5. Since public nuisance claims affect the general public and the State has already brought forth a public nuisance claim, which was subsequently settled and dismissed, the re-litigation of the same claims by Plaintiffs is barred by *res judicata*.

For these reasons, and for the reasons set forth in the accompanying Memorandum, the Court should grant ABDC’s Motion for Summary Judgment in its favor.

Dated: March 13, 2020

Respectfully submitted,

***AmerisourceBergen Drug Corporation***

By Counsel:

/s/ Gretchen M. Callas

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 13<sup>th</sup> day of March, 2020, the foregoing *AmerisourceBergen Drug Corporation's Motion for Summary Judgment Based on Res Judicata* was served using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Gretchen M. Callas  
Gretchen M. Callas (WVSB # 7136)